United Nations CAT/C/64/D/742/2016

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
21 September 2018

Original: English

Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 742/2016*, **

Submitted by:	A.N. (represented by counsel, Centre Suisse pour la Défense des Droits des Migrants)
Alleged victim:	The complainant
State party:	Switzerland
Date of complaint:	12 April 2016 (initial submission)
Date of present decision:	3 August 2018
Subject matter:	Deportation to Italy
Procedural issues:	Insufficient substantiation of claims; inadmissibility *ratione materiae*
Substantive issues:	Risk of torture; right to rehabilitation
Articles of the Convention:	3, 14 and 16

1.1 The complainant is A.N., a national of Eritrea born in 1987, who is subject to a deportation order from Switzerland to Italy. He submitted a complaint on 11 April 2016, which was added to on 2 February 2017. The complaint was registered on 21 April 2016. He claims that his deportation would constitute a violation by the State party of his rights under articles 3, 14 and 16 of the Convention. The complainant is represented by counsel.

1.2 On 6 February 2017, pursuant to rule 114 of its rules of procedure, the Committee, acting through its Rapporteur on new complaints and interim measures, asked the State party not to expel the complainant while the complaint was being considered. On 13 February 2017, the State party informed the Committee that, in application of the request for interim measures, the complainant would not be deported during the examination of the communication.

The facts as presented by the complainant[1]

2.1 The complainant was living in Hagaz Province in Eritrea, where he was member of a football team. Around January 2008, the players of another football team spent one night in

* Adopted by the Committee at its sixty-fourth session (23 July–10 August 2018).

** The following members of the Committee participated in the examination of the communication: Essadia Belmir, Felice Gaer, Abdelwahab Hani, Claude Heller Rouassant, Jens Modvig, Ana Racu, Diego Rodriguez-Pinzón, Sébastien Touzé, Bakhtiyar Tuzmukhamedov and Honghong Zhang.

[1] The account of events prior to the complainant's arrival in Switzerland comes from the reconstruction elaborated by the specialized trauma clinic for victims of torture and war at Geneva University Hospitals, which was obtained during 12 months of therapy. It is contained in a report dated 14 December 2016.

his house and left the country without authorization the following day. The complainant was unaware of the players' plan to leave the country. The act of leaving the country without authorization is illegal and punishable as a criminal offence in Eritrea. Later that day, three soldiers came to the complainant's house with an arrest warrant, accusing him of having helped the football players leave the country. He was handcuffed and taken to a prison in Agordat.

2.2 The complainant was detained in Agordat for two months. He was tortured once or twice a week with the aim of making him reveal the names of the persons who had helped the players leave the country. During the interrogation sessions, his hands and feet were tied up, he was battered with sticks, kicked, slapped, punched, insulted and humiliated. His interrogator threatened to kill him on several occasions and regularly asked the prison wardens why the complainant was still alive and why they had not killed him yet. After two months, the complainant was transferred to the prison at Hamashai Medeber where he was detained for another two months, one and a half months of which he spent in isolation. In April 2008, he was taken to Sembel prison in Asmara, where he was sentenced to seven years' imprisonment for attempting to leave the country illegally. The sentence was later shortened to five years for reasons that were never explained to him. The complainant never had the opportunity to contest his sentence in any way; he did not have access to a lawyer and was never brought before a judge. In Sembel, he was in isolation for six months in a cell that only had very small windows at the top. In April 2010, he was transferred to Jufa prison, in Keren, where he was isolated for six months in a small cell of one square metre. In January 2013, having completed his sentence, the complainant was released. In sum, he endured torture, ill-treatment, malnourishment, illness and verbal abuse and threats on a daily basis during his detention.

2.3 In June 2013, the complainant tried to leave the country but the authorities arrested him in Alabou. He was imprisoned in Adi Omer, which the complainant describes as a huge underground prison made of earth, which he often heard falling from the ceiling, and in which there were snakes. He was constantly battered covered in oil to reduce the scars. He was tied to a chair with his hands behind his back and interrogated. He was hit with sticks and with rubber. He was told he would not leave the prison alive. He was hit on his lower abdomen and subsequently suffered from haematuria (blood in his urine). He did not receive any medical treatment. He was frequently confronted with the screams of others being tortured, which affected him severely. In July 2013, he was transferred to Aboy Rugum, where he was forced to undergo military training until December 2013. Afterwards, he was sent to Keren as a soldier, with the task of surveying the border and arresting persons likely to leave the country.

2.4 In July 2014, unable to continue imposing on others the same fate that he had suffered, the complainant left Eritrea, crossing on foot from the Eritrean border city of Agordat into Sudan. At Kassala, he was intercepted by the Sudanese authorities who transferred him to a refugee camp at Wedi Sherify for a brief period. He was then transferred to Shegereab for two months, continuing from there to Khartoum, where he stayed until July 2015. From Khartoum, he crossed the Sahara by car to Libya. After reaching Tripoli, he was kidnapped and detained for 10 days by a gang of smugglers who demanded $3,500 from each of the 42 migrants in his group. None of them could pay the ransom and they were ill-treated until their release by a rival gang of smugglers.

2.5 The complainant boarded an overcrowded boat for the crossing to Italy. After a short time at sea, the boat was intercepted by the Italian authorities (Italian navy or coastguard) and he was brought to Italy and transferred to Milan. At a police station in Verona, the Italian authorities took his fingerprints. After four days, during which time the complainant was sheltered by a non-governmental organization, he travelled onwards to Switzerland by train. He submits that he never formally submitted an asylum application in Italy.

2.6 On 9 September 2015, he requested asylum in Switzerland. On 16 September 2015, the complainant was interviewed by the Swiss authorities to register his asylum request.

2.7 By letter of 23 October 2015, the State Secretariat for Migration notified the complainant of its decision to order his removal from Switzerland to Italy in application of Regulation No. 604/2013 of the European Parliament and of the European Council of 26

June 2013, the so-called Dublin III Regulation, which applied in Switzerland by virtue of an association agreement. According to the letter, under the terms of the Dublin III Regulation, the general rule is that the first member State that an asylum applicant comes into contact with becomes the member State responsible for the examination of the claim for international protection. Since the complainant had passed through Italy, where his fingerprints were registered, it was responsible for adjudicating his claim.

2.8 Since 2 November 2015, the complainant has been receiving treatment at the specialized trauma clinic for victims of torture and war at Geneva University Hospitals. According to a medical report by the clinic co-signed by two doctors (Dr. Emmanuel Escard, psychiatrist, and Dr. Wania Roggiani, internist),[2] the complainant presents a combination of physical symptoms and psychological disorders that constitute post-traumatic stress disorder, a clinical picture typically found in victims of violence. He has begun to construct a therapeutic relationship with his physicians, which is the necessary precondition for the healing process. According to his treating physicians, it is critically important for the complainant to continue to benefit from the specialized psychiatric care of the clinic. They warn of the dire consequences of forcibly interrupting the treatment, including chronical post-traumatic stress disorder and an evolution towards chronic associated post-traumatic disorders, such as severe depression, anxiety, and personality or identity disorders, with serious repercussions on his psychosocial health. Finally, a forced removal would separate the complainant from his brother who also lives in Geneva. According to the report, the complainant's brother provides him with stability and moral support and his proximity is essential to the success of the treatment he follows. The doctors fear that separation from his brother could negatively affect the psychological health of the complainant, exposing him to a very dangerous decline.

2.9 On 3 November 2015, the complainant appealed the State Secretariat's decision of 23 October 2015 to the Federal Administrative Tribunal without legal counselling. In his appeal, he claimed that the Italian reception system for asylum seekers had collapsed and could not provide even the most basic vital needs of food and shelter. The complainant requested an extension to provide medical evidence from the specialized trauma clinic, as he had just started his treatment. He also requested that a pro bono lawyer be appointed to represent him in his appeal. On 10 November 2015, the Federal Administrative Tribunal considered the appeal manifestly ill-founded and rejected it, charging the court costs to the complainant.

2.10 On 12 April 2016, the complainant submitted his complaint to the Committee, it was registered on 21 April 2016.

2.11 On 29 September 2016, the State party submitted a standard form for the exchange of health data prior to a Dublin transfer to the Italian authorities, attaching the complainant's medical certificate translated into English. On 12 October 2016, the complainant was deported to Italy. He arrived in Malpensa Airport at around noon and was taken by police officers to an office where his fingerprints were taken. He was given some documents, without any explanation of their content. Even though the complainant does not read English or Italian and only understands a little spoken English, no interpretation was offered. After waiting for two hours, he was given his personal belongings and was asked, in English, if he knew anybody in Milan, to which he answered that he did not. He was then asked to wait in the airport for a seat to become vacant in a room next to the luggage so that he could spend the night there. He had not received anything to eat. He asked three times what he was supposed to do but nobody answered. Between 5 p.m. and 7.30 p.m., he was asked to wait outside of the airport. During that time, police officers passed by and asked for his identity documents, and he received a call from an acquaintance living in Milan who asked him to go to the train station where he could find a temporary shelter with Caritas. At 9.30 p.m., he found the shelter and queued for four hours, but he did not get a place to sleep or eat there. He had no choice but to sleep outside. The next day, he started queuing at 1 p.m. and he got a place in the shelter. The complainant describes the situation as chaotic, with hundreds of asylum seekers sleeping in the streets with no assistance from the authorities. He realized that, in Italy, he had no chance of having a shelter assigned to him

[2] The complainant attaches a medical report dated 15 March 2016.

and would be obliged to sleep on the streets, with no means to cover his basic needs, and that he would have no access to medical health care. The complainant did not have access to any information on how to file an asylum application and nobody asked him to provide information about his health.

2.12 On 14 October 2016, the complainant decided to return to Switzerland and on 20 October 2016 he filed a new asylum application. He noted that he was a victim of torture in need of specialized medical care, which he could not receive in Italy. He attached a medical report to his application.[3] It was stated in the medical report that the complainant had been treated for 12 months once or twice a week by the specialized trauma clinic in Geneva, that he was severely traumatized by the acts of torture and ill-treatment he had suffered in Eritrea and that he had severe post-traumatic stress disorder with a pronounced tendency to isolate himself. It also reiterated that the complainant needed the support of his brother, with whom he had a close and dependant relationship and that if the complainant were deprived of the specialized treatment for victims of torture or a stable social environment, he could fall into a depression, with a high probability that he could commit suicide. Drafted after 12 months of therapy and thanks to the close therapeutic relationship built between the doctors and the complainant, the report provides a detailed account of his story in Eritrea and of the acts of torture he suffered.

2.13 On 28 November 2016, the State Secretariat submitted a standard form to the Italian authorities to request that they take back the complainant. The form did not include any information about his particular needs.

2.14 On 22 December 2016, in the absence of a response from the Italian authorities, the State Secretariat decided to deport the complainant to Italy in accordance with the Dublin III Regulation. On 24 January 2017, the Federal Administrative Tribunal rejected the complainant's appeal. The Court considered that, in spite of the medical report, the complainant was not dependant. It further considered that it had not been proven that the complainant was critically ill or appeared to be close to death and could not be guaranteed any nursing or medical care in the country of deportation.

The complaint

3.1 The complainant claims that his forced return to Italy would violate his rights under articles 3, 14 and 16 of the Convention. He submits that, if returned to Italy, he would be exposed to a situation amounting to cruel, inhuman or degrading treatment and deprived of any opportunity for rehabilitation.

3.2 He claims that Italy is no longer able to meet the needs of asylum seekers or to ensure access to basic services, such as shelter and essential medical care. This is particularly true for victims of torture, who have specific medical needs. According to the complainant, he would not have access to a real asylum application procedure in Italy. This situation would leave him with no reasonable choice but to seek protection elsewhere, exposing him to a risk of chain refoulement to his home country.

3.3 The complainant notes that, given the current migration influx, the Italian authorities cannot guarantee adequate reception and accommodation conditions to preserve their dignity. The complainant submits that the decision of the European Council[4] to relocate a

[3] Medical report dated 14 December 2016, submitted by the complainant to the State Secretariat for Migration on 16 December 2016. The report is attached to the additional information submitted by the complainant on 2 February 2017.

[4] See Council Decision 1523/2015 of 14 September 2015, paras. 13–14: "Due to the ongoing instability and conflicts in the immediate neighbourhood of Italy and Greece, it is very likely that a significant and increased pressure will continue to be put on their migration and asylum systems, with a significant portion of the migrants who may be in need of international protection. This demonstrates the critical need to show solidarity towards Italy and Greece and to complement the actions taken so far to support them with provisional measures in the area of asylum and migration. At the same time, Italy and Greece should provide structural solutions to address exceptional pressures on their asylum and migration systems. The measures laid down in this Decision should therefore go hand in hand with the establishment by Italy and by Greece of a solid and strategic framework for responding to the crisis situation and intensifying the ongoing reform process in these areas. In this respect, Italy and

total of 39,600 asylum seekers from Italy to other European Union countries constitutes an express recognition by the European Union institutions that Italy is no longer able to process the applications of asylum seekers, thus exposing them to the risk of fundamental rights violations, including violations of the non-refoulement principle. In the decision, the European Council characterizes the situation in Italy as an exceptional emergency situation. The European Court of Human Rights — in *Tarakhel v. Switzerland*[5] — also noted the serious problems faced by the Italian authorities since 2011 to receive asylum seekers, including the significant difficulties in accommodating them and ensuring adequate living conditions and access to medical care. Both the European Court of Human Rights and the Human Rights Committee[6] have recognized the need to obtain personal assurances from the Italian authorities in cases of deportations to Italy in application of the Dublin III Regulation.

3.4 The complainant adds that, according to a report by the Swiss Refugee Council,[7] shelters in Italy are deemed inadequate to hold persons in situations of vulnerability, such as victims of torture. These victims might end up living in the streets following their return to Italy or in squats governed by migrants, which are paying and inadequate for persons in situations of vulnerability.[8] According to a recent report by Doctors without Borders,[9] in December 2015, of the over 100,000 migrants accommodated in reception centres in Italy, nearly 80,000 are placed in extraordinary reception centres; 19,000 are in centres that are part of the Protection System for Asylum Seekers and Refugees; and just over 7,000 are located in government centres for the initial reception of asylum seekers.

3.5 According to the Swiss Refugee Council,[10] access to medical treatment is limited, in particular specialized psychiatric treatment, given the absence of information on how to access it and the lack of interpretation services for consultations with specialists. In addition to finding that there was a high risk that asylum seekers might live in the streets, the Refugee Council found that such persons had no access to psychological treatment of the kind that the complainant required.

3.6 The complainant claims that he was denied access to a lawyer, both at first instance and on appeal, that the Federal Administrative Tribunal rejected his offer to provide medical evidence, and that it adopted a single-judge simplified procedure and imposed court costs on him despite his proven indigence. He argues that these facts constitute a violation of his right to an effective remedy contained in article 14 of the Convention. Furthermore, in the light of the above information, and his own experience when he was deported to Italy, the complainant claims that he would probably not be able to find accommodation or specialized medical treatment in Italy comparable to the treatment he is already receiving in Switzerland. The separation from his brother would also have particularly traumatizing effects on his mental health and entail a risk of re-traumatization. The lack of emotional support and guarantees of access to accommodation and specialized medical treatment in Italy would prevent the complainant's rehabilitation as a victim of torture, in violation of article 14 of the Convention.

Greece should, on the date of entry into force of this Decision, each present a road map to the Commission which should include adequate measures in the area of asylum, first reception and return, enhancing the capacity, quality and efficiency of their systems in these areas, as well as measures to ensure appropriate implementation of this Decision with a view to allowing them to better cope, after the end of the application of this Decision, with a possible increased inflow of migrants on their territories."

[5] See *Tarakhel v. Switzerland* (application No. 29217/12), judgment of 4 November 2014, para. 120.

[6] See *Jasin et al. v. Denmark* (CCPR/C/114/D/2360/2014), para. 8.9, and *Tarakhel v. Switzerland*, para. 122.

[7] The complainant cites Swiss Refugee Council, *Reception Conditions in Italy: Report on the Current Situation of Asylum Seekers and Beneficiaries of Protection, in Particular Dublin Returnees* (Bern, October 2013).

[8] Ibid.

[9] Doctors without Borders, "Neglected trauma — asylum seekers in Italy: an analysis of mental health distress and access to healthcare" (Rome, 15 July 2016).

[10] Swiss Refugee Council, *Reception Conditions in Italy*.

3.7 Finally, the complainant argues that his situation as a victim of torture with severe post-traumatic stress disorder and a dependency on his brother, as explained in his medical report, together with the lack of health care and a social support network in Italy, constitute exceptional circumstances that would render his deportation to Italy cruel, inhuman and degrading treatment in violation of article 16. For the same reasons, the complainant's deportation to Italy would violate the principle of non-refoulement and article 3 of the Convention.

State party's observations on admissibility and the merits

4.1 In its submissions dated 21 October 2016 and 2 March 2017, the State party contested the admissibility of the complainant's allegations in relation to articles 14 and 16 of the Convention *ratione materiae*. According to the State party, the obligations to provide redress, compensation and rehabilitation contained in article 14 are limited to victims of acts of torture committed within the territory of the State party, or by or against one of its citizens. The primary aim of this article being to re-establish the dignity of the victim, States parties have a margin of appreciation in how they achieve this. Neither article 14 nor the Committee's general comment No. 3 (2012) on the implementation of article 14 exclude the possibility of cooperation between States parties to ensure rehabilitation. Victims do not have a right to obtain a specific measure from a service provider of their choice in the State of their choice. The State party also notes that the Committee's jurisprudence has established that the scope of the non-refoulement obligation described in article 3 does not extend to situations of ill-treatment envisaged by article 16.[11] Since Italy has recognized the competence of the Committee to receive and examine individual complaints, the complainant may file a new complaint and request interim measures if Italy were to expel him to Eritrea.

4.2 The State party notes that Italy is party to a number of international treaties on human rights, the prevention of torture and the status of refugees. It notes that the capacity of Italy to shelter refugees is certainly under great pressure at present, but the system has certainly not collapsed, as recognized by the European Court of Human Rights in, inter alia, *Mohammed Hassan et al. v. the Netherlands and Italy*.[12] Some of these decisions by the European Court of Human Rights concerned vulnerable persons. The State party also considers that the asylum procedure has not failed structurally in Italy, as is the case in Greece. The State party notes that, in *Tarakhel v. Switzerland*, quoted by the complainant, the Court did not oppose the transfer of asylum seekers to Italy, but only requested, in the case of a family with small children, that personal assurances be requested. If the complainant were to find himself in a situation violating his dignity or any of his human rights in Italy, he could claim his rights directly before the Italian authorities. However, he left Italy before the authorities could examine his application, not giving the State the opportunity to decide on the matter or to provide him with adequate shelter. The State party considers that the complainant has not substantiated his claims that the Italian authorities provided him with information leaflets without translation insofar as he did not submit a copy of those leaflets. The State party notes that the complainant has not claimed to be a victim of torture or any other treatment prohibited by article 3 of the Convention in Italy. In those circumstances, the State party considers that all allegations in connection with article 3 are ill-founded.

4.3 The State party further considers that, should allegations under article 14 of the Convention be considered admissible, they do not disclose a violation. The State party notes that the complainant is a young man with no dependants and that there are no reasons to think that his health problems are serious or invalidating. He was able to live without his brother for several years and able to arrive in Europe without his help, meaning that his brother's presence is not essential. The current situation of the complainant is not one of a particularly vulnerable person. The complainant's medical records were transmitted to Italy, which has a medical system very similar to that in Switzerland. The European Court of

[11] See *T.M. v. Sweden* (CAT/C/31/D/228/2003), para. 6.2, and *B.S. v. Canada* (CAT/C/27/D/166/2000), para. 7.4.

[12] Application No. 40524/10, decision of 27 August 2013.

Human Rights has already decided, in a case involving the transfer to Italy of an asylum seeker undergoing psychiatric treatment, that there was no reason to believe that the complainant would not benefit from access to appropriate medical care.[13] There is no reason to think that the Italian authorities would refuse adequate treatment to the complainant to the extent that his health or his existence were endangered.

4.4 In relation to the complainant's allegations that he has not had access to an effective remedy in the State party, the State party stresses that the complainant managed, even without legal assistance, to file an appeal with the Federal Administrative Tribunal; that, according to the applicable law, a person may not have the court fees waived when an appeal is manifestly inadmissible; that the complainant was able to cover the fees; and that the Tribunal might accept further evidence to clarify the facts and it enjoys a margin of appreciation on this matter. Furthermore, the State party notes that single-judg decisions are agreed upon by a second judge and that, in case of disagreement, they are brought to a three-judge chamber. The State party concludes that the complainant has had access to an effective remedy.

4.5 The State party also considers that, should allegations under article 16 be considered admissible, they are ill-founded. The State party recalls that, according to the Committee's jurisprudence,[14] only in very exceptional circumstances may a removal per se constitute cruel, inhuman or degrading treatment and that aggravation of an individual's physical or mental health condition owing to deportation is generally insufficient, in the absence of additional factors, to amount to degrading treatment in violation of article 16. In the present complaint, the complainant has not claimed or substantiated such exceptional circumstances.

Complainant's comments on the State party's observations

5.1 In his submission dated 16 June 2017, the complainant clarifies that he did not return immediately to Switzerland, giving the Italian authorities the opportunity to provide him with shelter. He considers that the assumption by the State party that he did not give a chance to the Italian authorities to provide shelter is not based on any evidence. He submits that he does not possess substantial evidence on his stay in Italy, but that all the information that he has provided is coherent. However, he was never heard by the State party's authorities on this matter.

5.2 The complainant notes that the State party recognizes that article 14 of the Convention includes the obligation to cooperate in order to protect the right to rehabilitation, but that it has never engaged in cooperation with the Italian authorities regarding his treatment: it merely informed the Italian authorities of his medical conditions, but no reply was provided. He submits that he is not making the choice to be treated in Switzerland, but simply gaining access to the treatment he needs, which is not possible in Italy. The complainant distinguishes between the obligation to provide redress, compensation and rehabilitation contained in article 14, and considers that only redress and compensation are obligations limited to victims of acts of torture committed within the territory of the State party, or by or against one of its citizens. The right to rehabilitation that he is claiming has no geographical limitation. In its general comment No. 3, the Committee emphasized that States parties' obligations to provide rehabilitation to victims of torture could not be postponed, which obliged States parties to ensure that such victims had access to the most comprehensive available rehabilitation (para. 12). Furthermore, the complainant notes that, should the State party's argument about the geographical limitation of the obligations under article 14 be taken into account, Italy would have no obligation towards his rehabilitation. The State party's argument incurs contradiction and should be left aside. The complainant notes that, currently, the State party is fulfilling its obligation through the medical treatment that he is receiving at the specialized trauma clinic in Geneva.

5.3 Regarding the allegation by the State party that the scope of article 16 does not extend to deportations, the complainant notes that the Committee, in its general comment

[13] See European Court of Human Rights, *A.S. v. Switzerland* (application No. 39350/13), judgment of 30 June 2015, para. 36.

[14] See *Y.G.H. et al. v. Australia* (CAT/C/51/D/434/2010), para. 7.4, and *M.M.K. v. Sweden* (CAT/C/34/D/221/2002), para. 7.3.

No. 2 (2007) on the implementation of article 2, considered that article 3 obligations also extended to cruel, inhuman and degrading treatments (para. 6), and that that followed the jurisprudence of the Human Rights Committee [15] and the European Court of Human Rights.[16] Suggesting that the complainant should submit a complaint against Italy if he were to be deported to Eritrea would be deferring the State party's responsibility towards the protection of the complainant's human rights.

5.4 The complainant notes that the authorities of the State party have not undertaken any individual evaluation of his case. The State party has not invoked any report on which it bases its statement that Italy has the necessary medical infrastructure to treat his psychological needs. Instead, it merely relies on judgments of the European Court of Human Rights, which are mostly from 2013, namely before the high influx of migrants in 2015 and 2016. Today, a number of reports describe the lack of access to accommodation and medical treatment for asylum seekers in Italy. The complainant cites, in particular, the most recent report by the Swiss Refugee Council,[17] according to which there are structural failures in the current sheltering system, in particular the living conditions and the dissemination of information. Chance often determines if an asylum seeker is referred to the relevant shelter. Consequently, some persons may end up living in the streets and waiting months before they can submit an asylum request. The latest Asylum Information Database report underlines that the living conditions in shelters are not suitable for asylum seekers.[18] Furthermore, a regional report by the International Rehabilitation Council for Torture Victims also describes the lack of specific procedures in place in Italy to ensure the identification of victims of torture.[19] Despite an improvement in the identification of victims of torture following the implementation of a project between 2007 and 2012 by the Italian network for asylum seekers who are torture survivors, the project ended in 2012 due to lack of funding.[20]

5.5 According to reports by Doctors without Borders,[21] many accommodation centres for asylum seekers lack psychological support services. Although accommodation centres should facilitate access to medical services through the Italian public health system, such access is not always guaranteed, and the lack of a timely monitoring system and sanctions makes the implementation of these services discretionary. Also, social exclusion of asylum seekers and the lack of interpretation and translation services seriously limit potential access to health-care services. In any event, medical services provided through the Italian health-care system are not specially conceived to treat conditions typically affecting asylum seekers and refugees, which are largely different from those affecting the Italian population.[22] Doctors without Borders has determined that "procedures for mental health assessment within the [Italian health system] are inadequate or completely absent", that the "identification of vulnerabilities and transfer of patients to ad hoc medical facilities is slow

[15] See Human Rights Committee, general comment No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, para. 9.

[16] European Court of Human Rights, *M.S.S. v. Belgium and Greece* (application No. 30696/09), judgment of 21 January 2011; *V.M. and others v. Belgium* (application No. 60125/11), judgment of 17 November 2016; and *Tarakhel v. Switzerland*.

[17] Swiss Refugee Council, *Reception Conditions in Italy: Report on the Current Situation of Asylum Seekers and Beneficiaries of Protection, in Particular Dublin Returnees, in Italy* (Bern, August 2016).

[18] Asylum Information Database, *Country Report: Italy — Update 2016* (February 2017).

[19] International Rehabilitation Council for Torture Victims, "Falling through the cracks: asylum procedures and reception conditions for torture victims in the European Union" (Copenhagen, 2016).

[20] The project was created to treat asylum seekers who were victims of torture by providing access to rehabilitation services and specialized medical and psychological treatment. This project ran out of funding in 2012.

[21] Reports by Doctors without Borders, "Neglected trauma — asylum seekers in Italy: an analysis of mental health distress and access to healthcare" (Rome, 15 July 2016), and "Fuori Campo, richiedenti asilo e rifugiati in Italia: insediamenti informali e marginalità sociale" (Rome, March 2016).

[22] The complainant cites the Italian Refugee Council report, "The streets of integration — experimental research on the qualitative and quantitative level of integration of beneficiaries of international protection present in Italy for at least three years" (June 2012).

and often non-existent" and that "there is a lack of culturally appropriate human and financial resources and mental health services to treat asylum seekers".[23]

5.6 The complainant adds that the wave of migration in Italy in 2016 collapsed the reception system and that migrants have to wait for weeks or months before being able to file an asylum claim and to get access to the reception system.[24] In the light of this, informal accommodation structures have been put in place, but they are not adapted to receive persons in vulnerable situations. Poor living conditions in these centres worsen the mental health of asylum seekers with psychiatric conditions. The complainant therefore argues that the living conditions in Italy for asylum seekers who, like him, are in a vulnerable situation and suffer post-traumatic stress disorder are unbearable.

5.7 The notion of "situation of vulnerability" should not be limited to families with children but should include persons belonging to a particularly vulnerable group, like victims of torture, such as the complainant.[25] In this connection, the complainant takes note of the State party's claim that *Tarakhel v. Switzerland* is irrelevant because it refers to the case of a family with small children. However, he notes that the Court recognized in that case that asylum seekers belonged to a particularly vulnerable group, needing special protection and that shelter could be inaccessible to some asylum seekers in Italy.

5.8 The complainant argues that, in *A.S. v. Switzerland* referred to by the State party, the Court failed to take into account the specific needs of a torture survivor with respect to rehabilitation and the fact that this is a freestanding civil right.[26] The Court reviewed its jurisprudence on the matter of removing persons with health problems in *Paposhvili v. Belgium*, considering that removals that would constitute a violation of article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) include the removal of "a seriously ill person in which substantial grounds have been shown for believing that he or she, although not at imminent risk of dying, would face a real risk, on account of the absence of appropriate treatment in the receiving country or the lack of access to such treatment, of being exposed to a serious, rapid and irreversible decline in his or her state of health resulting in intense suffering or to a significant reduction in life expectancy".[27] The Court also established that if, after an analysis of the situation in the receiving country, there remained doubts as to the accessibility of the necessary treatments, individual assurances must be requested before the removal. The complainant reiterates that the State party did not request individual assurances in his case.

5.9 The complainant also notes that the State party questions the gravity of the state of his health. By doing so, the State party questions the evaluation of professionals and the content of detailed medical reports without providing any evidence to the contrary.

5.10 The complainant concludes that the exceptional circumstances of his case justify that his removal to Italy would constitute a violation of articles 3, 14 and 16 of the Convention, and that the State party failed to undertake an individual evaluation of his case.

Additional submission by the complainant

6. On 21 July 2017, the complainant submitted a medical report by the specialized trauma clinic in Geneva, certifying that he was still under treatment and, at the time, suffering an episode of depression of medium to severe intensity. The doctors recommended that the complainant continued his psychotherapeutic treatment.

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[23] Doctors without Border, "Neglected trauma", pp. 13, 14 and 17. In the report, the organization states that "cultural mediation is often absent or else is carried out by Italian staff within the [national health system]" (p. 16), "the environment within the [national health system] is often unsuitable and overcrowded" (p. 20) and "extraordinary reception centres are often in isolated locations, making integration impossible" (p. 20).

[24] Doctors without Borders, "Fuori Campo".

[25] See *V.M. and others v. Belgium*.

[26] REDRESS brief of 27 July 2016 to the Committee against Torture on *D. v. Switzerland* (communication No. 700/2015).

[27] See European Court of Human Rights, *Paposhvili v. Belgium* (application No. 41738/10), judgment of 13 December 2016, para. 183.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claim submitted in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being, examined under another procedure of international investigation or settlement.

7.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that, in the present case, the State party has admitted that all available domestic remedies were exhausted. The Committee therefore finds that it is not precluded from considering the communication under article 22 (5) (b) of the Convention.

7.3 The Committee notes the State party's argument that the complainant's allegations under articles 14 and 16 are inadmissible *ratione materiae* because obligations to provide redress, compensation and rehabilitation contained in article 14 are limited to victims of acts of torture committed within the territory of the State party, or by or against one of its citizens, and because the scope of the non-refoulement obligation described in article 3 does not extend to situations of ill-treatment envisaged by article 16. The Committee also notes the complainant's arguments that the right to rehabilitation has no geographical limitation, as implied by the Committee's general comment No. 3, according to which States parties' obligations to provide rehabilitation to victims of torture cannot be postponed; that the Committee, in its general comment No. 2, has considered that article 3 obligations also extend to cruel, inhuman and degrading treatments (para. 6); and that suggesting that he should submit a complaint against Italy if he were to be deported to Eritrea would be deferring the State party's responsibility towards the protection of his human rights. The Committee considers that the obligations of States parties towards the rehabilitation of victims of torture require them to ensure that their legal systems allow for such protection in situations in which, under some circumstances, deportation to another State party may raise questions under article 16. Accordingly, the Committee finds the complainant's allegations under articles 14 and 16 admissible *ratione materiae*.

7.4 As the Committee finds no further obstacles to admissibility, it declares the communication submitted under article 3, 14 and 16 of the Convention admissible and proceeds with its consideration of the merits.

Consideration of the merits

8.1 In accordance with article 22 (4) of the Convention, the Committee has considered the communication in the light of all information made available to it by the parties.

8.2 In the present case, the issue before the Committee is whether the forced removal of the complainant to Italy would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or to return ("refouler") a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture or to cruel, inhuman or degrading treatment or punishment.

8.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture or ill-treatment upon return to Italy. In assessing that risk, the Committee must take into account all relevant considerations, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights.[28]

8.4 The Committee recalls its general comment No. 4 (2017) on the implementation of article 3 in the context of article 22, according to which the non-refoulement obligation exists whenever there are "substantial grounds" for believing that the person concerned

[28] See the Committee's general comment No. 4 (2017) on the implementation of article 3 in the context of article 22, para. 43.

would be in danger of being subjected to torture in a State to which he or she is facing deportation, either as an individual or a member of a group that may be at risk of being tortured in the State of destination; and that the Committee's practice has been to determine that "substantial grounds" exist whenever the risk is "foreseeable, personal, present and real" (para. 11). The Committee also recalls that the burden of proof generally falls on the complainant, who must present an arguable case — namely, to submit circumstantiated arguments showing that the danger of being subjected to torture is foreseeable, present, personal and real. However, when the complainant is in a situation in which he or she cannot elaborate on his or her case, the burden of proof is reversed and it is up to the State party concerned to investigate the allegations and verify the information on which the communication is based (para. 38). The Committee gives considerable weight to findings of fact made by the organs of the State party concerned; however, it is not bound by such findings and will make a free assessment of the information available to it in accordance with article 22 (4) of the Convention, taking into account all the circumstances relevant to each case (para. 40).

8.5 In the present case, the Committee takes note of the complainant's allegation that, if transferred to Italy, he would likely have no access to accommodation, nor to the specialized medical and psychiatric treatment or emotional support from his brother, all of which he requires as a victim of torture. This would leave him no reasonable choice but to seek protection elsewhere, exposing him to a risk of chain refoulement to his home country. The complainant has provided extensive reports describing the largely deficient reception conditions for asylum seekers in Italy. These include the insufficient capacity of accommodation centres to house asylum seekers, including Dublin returnees, the deficient living conditions in those centres, and the very limited access to medical and specialized psychiatric treatment for asylum seekers. This situation is compounded by the lack of adequate procedures to systematically identify victims of torture. Although the State party, on 29 September 2016, informed the Italian authorities of the complainant's health situation in a standard form for the exchange of health data prior to a Dublin transfer, the Committee notes that this form did not establish that the complainant is a victim of torture. It also notes that the State party did not request individual assurances from the Italian authorities and that they did not respond to the submission of his medical report. Furthermore, on 12 October 2016, the complainant was transferred to Italy where he claims he was not provided with shelter on the first night or information on health care or filing an asylum application in a language he could understand, and he did not receive any medical assistance. On 28 November 2016, the State Secretariat for Migration submitted to the Italian authorities a standard form to request that the State party take back the complainant. The Committee notes that this form did not include any information about the complainant's health and specific needs, and that the State party's authorities decided to transfer the complainant to Italy again, despite the absence of a response.

8.6 The Committee considers that it was incumbent upon the State party to undertake an individualized assessment of the personal and real risk that the complainant would face in Italy, in particular considering his specific vulnerability as an asylum seeker and victim of torture, rather than relying on the assumption that he is not particularly vulnerable and would be able to obtain adequate medical treatment there.[29]

8.7 The Committee notes the State party's claims that there are no reasons to think that the complainant's health problems are serious or invalidating, or to believe that his brother's presence is essential to him. However, the Committee also notes that the complainant has provided three medical reports with very detailed information regarding his vulnerability as a victim of torture, his specific needs and the necessity for him to remain close to his brother, the validity of which has not been challenged by the State party. The Committee notes the complainant's statement that the lack of specialized medical and psychiatric treatment, together with the probable lack of accommodation and the absence of any family support in Italy, would prevent his full rehabilitation as a victim of torture. The Committee observes that the complainant has been receiving specialized psychiatric treatment for victims of torture in Switzerland, and that the continuation of this treatment is

[29] See *Jasin v. Denmark*, para. 8.9.

necessary for his rehabilitation. According to the medical report of 14 December 2016, the interruption of the specialized treatment and of the stable social environment provided by his brother would put the complainant at risk of irreparable harm, as his depressive state would worsen to such an extent that he would be likely to commit suicide. The Committee further notes that this precarious situation endangering the life of the complainant would leave him no reasonable choice but to seek protection elsewhere, exposing him to a risk of chain refoulement to his home country.

8.8 Against this background, the Committee considers that the State party should have ascertained whether appropriate rehabilitation services in Italy were actually available and accessible to the complainant in order to satisfy his right to rehabilitation as a victim of torture, and to seek assurances from the Italian authorities to ensure that the complainant would have immediate and continuing access to such treatments until such time as he no longer needed them. In the absence of any information from the State party suggesting that such an assessment took place in the present case, and in view of the complainant's health situation, the Committee considers that the State party failed to sufficiently and individually assess the complainant's personal experience as a victim of torture and the foreseeable consequences of forcibly returning him to Italy. The Committee therefore considers that, by deporting the complainant to Italy, the State party would deprive him of his right to rehabilitation, and that this situation would by itself amount, in the circumstances of the complainant, to ill-treatment. Accordingly, forcibly returning the complainant to Italy would constitute a breach of articles 14 and 16 of the Convention.

8.9 The Committee recalls that, according to its general comment No. 2, the obligation to prevent ill-treatment overlaps with and is largely congruent with the obligation to prevent torture and that, in practice, the definitional threshold between ill-treatment and torture is often not clear. Experience demonstrates that the conditions that give rise to ill-treatment frequently facilitate torture and therefore the measures required to prevent torture must be applied to prevent ill-treatment (para. 3). It also recalls that, according to the same general comment, the protection of certain minority or marginalized individuals or populations, such as asylum seekers, who are especially at risk of torture is a part of the obligation to prevent torture or ill-treatment (para. 21).

8.10 The Committee also recalls that States parties should consider whether other forms of ill-treatment that a person facing deportation is at risk of experiencing might change so as to constitute torture before making a non-refoulement assessment. In this regard, severe pain or suffering cannot always be objectively assessed and it depends on the negative physical and/or mental repercussions that the infliction of violent or abusive acts has on each individual, taking into account the relevant circumstances of each case, including the nature of the treatment, the sex, age and state of health and vulnerability of the victim or any other status or factors (paras. 16–17). The Committee notes that, in the complainant's case, the ill-treatment that he would be exposed to in Italy, together with the absence of a stable social environment provided by his brother, would entail a risk of his depressive state worsening to the extent that he would be likely to commit suicide and that, in the circumstances of this case, this ill-treatment could reach a level comparable to torture. The Committee is therefore of the view that the deportation of the complainant to Italy would constitute a breach of article 3 of the Convention.

9. The Committee, acting under article 22 (7) of the Convention, concludes that the complainant's deportation to Italy would constitute a breach of articles 3, 14 and 16 of the Convention.

10. The Committee is of the view that, in accordance with articles 3, 14 and 16 of the Convention, the State party has an obligation to refrain from forcibly returning the complainant to Italy and to continue complying with its obligation to provide the complainant, in full consultation with him, with rehabilitation through medical treatment. Pursuant to rule 118, paragraph 5, of its rules of procedure, the Committee invites the State party to inform it, within 90 days from the date of the transmittal of the present decision, of the steps it has taken to respond to the above observations.